

**From:** Kdowsiany@aol.com@inetgw  
**To:** Microsoft ATR  
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Renata Hesse  
Trial Attorney  
Antitrust Division  
Department of Justice  
601 D Street NW  
Suite 1200  
Washington, DC 20530

RE: U.S. v. Microsoft

#### OVERVIEW

For more than three years Microsoft has been defending itself in antitrust litigation brought by the U.S. Justice Department and eighteen states, including Ohio. The proposed consent decree between Microsoft and the U.S. Department of Justice reflects a settlement, which adequately protects the interests of the Department of Justice, the states and Microsoft, while achieving the desired goal of consumer protection.

#### UNCLEAR BASIS FOR ANTITRUST ACTION AGAINST MICROSOFT

Many critics, including the Buckeye Institute (Ohio's free market think tank) questioned the Justice Department's use of antitrust laws against Microsoft to punish the company's innovative use of technology, which provided useful products to businesses and individuals at low prices. The involvement of the state attorneys general was even more puzzling. It has never been clear how Ohio's citizens have been in any way harmed by Microsoft's business practices. The only clear beneficiaries to this antitrust case are Microsoft's competitors who prefer to have Microsoft mired in litigation instead of competing in the marketplace.

#### IMPLICATIONS FOR ANTITRUST LAW IN THE DYNAMIC TECHNOLOGY MARKETPLACE

This case calls into question the relevancy of antitrust laws in the fast-changing technology marketplace of today. One of the main reasons for the government's case was to ensure competition in Internet browsers. However, within several months of commencement of the case, the marketplace changed dramatically.

Microsoft's core business - writing the operating systems of personal computers - is under serious challenge from Linux and Apple. The center of gravity for computing is shifting away from the personal computer, where Microsoft has a significant presence, onto the Internet where the conglomerate AOL-Time Warner is the major player. As technology progresses,

the focus will likely move to personal digital assistants, web-enabled telephones, satellite-based communication devices, and other tools.

The litigation against Microsoft sent a message to the rest of the technology economy that the use of innovation to meet consumer demands in an efficient manner will be punished by government agencies in the courts. This message sent shock waves throughout the American economy and hurt development in the technology sector.

#### EFFECT ON OHIOANS

The value of Microsoft stock tumbled by nearly 40% as the case dragged on. The more than 100,000 Microsoft shareholders that reside in Ohio collectively lost millions. And that does not include those investors who hold Microsoft stock in their mutual or pension funds. Other smaller technology company stocks fared even worse.

#### BREAK-UP OF MICROSOFT WOULD WEAKEN ECONOMY AND HURT CONSUMERS

The Buckeye Institute has publicly commended Ohio Attorney General Betty Montgomery, who has been involved with the case from a very early stage, for her support of the settlement and resistance to pursuing the break-up of Microsoft. She recognized that breaking up Microsoft would weaken our already slow economy, hurt consumers, and set a bad precedent effectively discouraging other high tech firms from investing in innovation and creativity.

#### SETTLEMENT MEETS GOALS OF CONSUMER PROTECTION WHILE PERMITTING CONTINUED INNOVATION IN THE MARKETPLACE

For those who have concerns about Microsoft's business practices, the settlement contains significant rules and regulations on how Microsoft designs, develops, and licenses its software. For example, all new Microsoft operating systems would have to include a mechanism that allows easier removal of the Microsoft Internet browser to switch to a different browser.

Importantly, however, this settlement will still allow Microsoft, which has been a lead engine of the American economy over the last decade, to focus on innovation and productivity instead of on defending itself from government attacks in the courts.

The proposed settlement satisfies the Justice Department and nine of the states that joined in the antitrust action. It adds consumer protections while permitting Microsoft to a responsible industry leader. In the long run, Microsoft's continued ability to innovate and create products that meet marketplace demands is the real benefit to consumers.

Sincerely,

David J. Owsiany, J.D.  
President  
The Buckeye Institute for Public Policy Solutions  
4100 North High Street  
Suite 200  
Columbus, Ohio 43214

Phone: (614) 262-1593  
Fax: (614) 262-1927

E-mail: [owsiany@buckeyeinstitute.org](mailto:owsiany@buckeyeinstitute.org)